

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

James A. Frameli ,	)	Case No. 1:15CV2627
	)	
Plaintiff,	)	Judge Patricia A. Gaughan
	)	
-vs-	)	<b>ORDER SETTING</b>
	)	<b>MEDIATION CONFERENCE</b>
Metro Design, Inc., et al,	)	
	)	Magistrate Judge McHargh
Defendants.	)	

A mediation conference will be held in the above-entitled case on **March 28, 2016, at 10:00 a.m.** in Chambers 9B, Carl B. Stokes United States Courthouse, 801 West Superior Avenue, Cleveland, Ohio, before the Honorable Kenneth S. McHargh, United States Magistrate Judge. All parties and their lead counsel are ORDERED TO APPEAR at that time.

**MEDIATION CONFERENCE PREPARATION**

Over 95% of all civil suits settle prior to trial. Therefore, mediation preparation should be treated as seriously as trial preparation. Planning is essential because the party who is best prepared obtains the best result. The Court has found that the following steps are essential to a successful mediation conference.

## **A. FORMAT**

**1. ATTENDANCE OF PARTIES REQUIRED. Parties with ultimate settlement authority must be personally present.** The conference shall be attended by an authorized representative of each party together with trial counsel for each party. An insured party need not attend unless the settlement decision will be made in part by the insured. When the settlement decision will be made in whole or part by an insurer, the insurer shall send a representative in person with full and complete authority to make settlement decisions. A corporate party shall send a representative with full and complete authority to bind the company. A governmental entity shall send a representative authorized to act on its behalf. Failure to produce the appropriate person(s) at the conference may result in an award of costs and attorney fees incurred by the other parties in connection with the conference and/or other sanctions against the noncomplying party and/or counsel.

**2. CONFIDENTIAL MEDIATION STATEMENT. No later than March 21, 2016, each party shall submit a confidential statement to the Magistrate Judge.** The settlement statement shall not become a part of the file of the case, but shall be for the exclusive use of the Magistrate Judge in preparing for and conduction of the settlement conference.

The settlement statement shall contain a specific recitation of the facts, a discussion of the strengths and weaknesses of the case, the parties' position on settlement, including a present settlement proposal, and a report on settlement efforts to date. If not already a part of the court file, copies of any critical agreements, business records, photographs or other documents or exhibits shall be attached to the settlement statement. The settlement statement should not be lengthy, but should contain enough information to be useful to the Magistrate Judge in analyzing the factual and legal issues in the case. The parties are directed to be candid in their statements.

The settlement statement shall not be filed with the clerk, but shall be emailed or faxed to the Magistrate Judge. The email address is [Deborah.W.Mattei@ohnd.uscourts.gov](mailto:Deborah.W.Mattei@ohnd.uscourts.gov) and the fax number is 216-357-7234. Unless requested by all parties, copies of the settlement statement shall not be provided to the other parties in the case.

**3. PREMEDIATION CONFERENCE DEMAND AND OFFER.** A mediation/settlement conference is more likely to be productive if, before the conference, the parties have had a written exchange of their settlement proposals. **Accordingly, no later than March 14, 2016, plaintiff's counsel shall submit a written itemization of damages and settlement demand to defendant's counsel with a brief explanation of why such a settlement is appropriate. No later than March 17, defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of why such a settlement is appropriate. On occasion, this process will lead directly to a settlement. If settlement is not achieved, plaintiff's counsel shall deliver or fax copies of these letters to Magistrate Judge McHargh's chambers no later March 21, 2016. Do not file copies of these letters with the Clerk's Office.**

**4. MEDIATION FORMAT.** The Court will generally use a format of opening presentations by each side followed by a joint discussion and private caucusing by the Court with each side. The Court expects both the lawyers and the party representatives to be fully prepared to participate. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to find creative means for resolving the dispute.

**5. STATEMENTS INADMISSIBLE.** Statements made by any party during the mediation conference are not to be used in discovery and will not be admissible at trial. Parties are encouraged to be frank and open in their discussions. The Court expects the parties to address each other with courtesy and respect.

**B. ISSUES TO BE DISCUSSED AT MEDIATION/SETTLEMENT CONFERENCE**

Parties should be prepared to discuss the following at the mediation conference:

1. What are your objectives in the litigation?
2. What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?
4. What are the points of agreement and disagreement between the parties?  
Factual? Legal?
5. What are the impediments to settlement?
6. What remedies are available through litigation or otherwise?
7. Are there possibilities for a creative resolution of the dispute?
8. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
9. Are there outstanding liens? Do we need to include a representative of the lienholder?

**C. INVOLVEMENT OF CLIENTS**

For many clients, this will be the first time they have participated in a court supervised mediation conference. Therefore, counsel shall provide a copy of this Standing Order to the client and shall discuss the points contained herein with the client prior to the mediation conference.

IT IS SO ORDERED.

Dated: March 2, 2016

s/Kenneth S. McHargh  
Kenneth S. McHargh  
United States Magistrate Judge